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Supreme Court of the United States

OCTOBER TERM, 1968

No. 1539 1540

JULIA ROSADO, LYDIA HERNANDEZ, MAJORIE MILEY, SOPHIA ABROM, RUBY GATHERS, LOUISE LOWMAN, EULA MAE KING, CATHRYN FOLK, ANNIE LOU PHILLIPS, and MAJORIE DUFFY, individually, on behalf of their minor children, and on behalf of all other persons similarly situated,

Plaintiffs,

—against—

GEORGE K. WYMAN, individually and in his capacity as Commissioner of Social Services for the State of New York, and the DEPARTMENT OF SOCIAL SERVICES FOR THE STATE OF NEW YORK,

Defendants.

MOTION FOR LEAVE TO FILE AND BRIEF OF AMERICAN CIVIL LIBERTIES UNION, NEW YORK CIVIL LIBERTIES UNION, and BLOCK COMMUNITIES, INC.; CITIZENS COMMITTEE FOR CHILDREN; CITIZENS UNION; COALITION FOR ADEQUATE INCOME AND MEDICAID; INTER-SCHOOL COUNCIL OF THE METROPOLITAN NEW YORK SCHOOLS OF SOCIAL WORK; NATIONAL ASSOCIATION OF SOCIAL WORKERS, NEW YORK CITY CHAPTER; NATIONAL URBAN LEAGUE; NEW YORK ACTION CORPS; PROJECT ON SOCIAL WELFARE LAW OF THE ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM, NEW YORK UNIVERSITY SCHOOL OF LAW; SOCIAL WORK ACTION FOR WELFARE; UNION SETTLEMENT ASSOCIATION; *AMICI CURIAE*

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Interest of *Amici*

The American Civil Liberties Union, the New York Civil Liberties Union and several other groups respectfully seek leave to file a brief *amici* herein in support of the petition for a writ of certiorari. *Amici* are organizations deeply involved in their daily professional endeavors with the problems of welfare recipients. Each is particularly concerned with the plight of the poor in our society. Each is particularly concerned with the relationship of economic discrimination to human liberty and dignity. These organizations and individuals seek to file a brief because this case affects, with awful and immediate directness, the lives of almost one million poverty stricken residents of New York, including several hundred thousand children.

ARGUMENT

The Reduction in Welfare Payments Mandated by Section 131-a of the New York Social Services Law Raises a Question of Critical National Importance Requiring Prompt Settlement in This Court.

Section 131-a of the New York Social Services Law, scheduled to go into effect on July 1, 1969, mandates a decrease of up to 20% in welfare payments to the approximately one million persons receiving Federal Aid to Families with Dependent Children (AFDC) in New York State.

The Federal District Court for the Eastern District of New York granted an injunction against the implementation of the reduction in the AFDC payments on the ground that Section 131-a is void because it is in conflict with Sec-

tion 402(a)(23) of the Social Security Act of 1935. The Court of Appeals for the Second Circuit has stayed the District Court's preliminary injunction, pending its own decision on the merits of the respondents' appeal therefrom. The District Court's permanent injunction rendered on June 18, 1969, has been temporarily stayed, pending action by the Court of Appeals for the Second Circuit. Accordingly, the implementation of Section 131-a is proceeding on schedule and will go into effect on July 1, 1969.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) authorizing this Court to grant a writ of certiorari upon the petition of a party prior to the rendition of judgment by the Court of Appeals. This Court has provided in Rule 20 that a:

> "writ of certiorari to review a case pending in a court of appeals, before judgment is given in such court, will be granted only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this Court."

We respectfully submit that this case is of "such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this Court."

The District Court has found as a fact that present levels of AFDC payments in New York are barely at the subsistence level. *Rosado* v. *Wyman,* —— F.Supp. —— (EDNY 1969) (per Weinstein, J.). The proposed cuts of up to 20% would, therefore, consign one million persons to an existence below the subsistence level. The tragedy and

irreparable injury inherent in such a human catastrophe is, unfortunately, all too apparent. It is absolutely unthinkable to permit one million human beings to be reduced to a state of existence below the subsistence level prior to, at the very least, permitting the victims an opportunity to contest the legality of the proposed reductions. Yet, with the staying of the District Court's injunction and in view of the imminent recess of this Court, no meaningful opportunity to challenge the legality of the proposed AFDC reductions on the merits will exist prior to their implementation. The reductions will go into effect on July 1, 1969, plunging one million persons even deeper into poverty, despair and hunger, without an opportunity for review by this Court and in the face of a favorable determination by the District Court.

We submit that the District Court was correct in ruling that the proposed AFDC reductions are unlawful. However, unless this Court grants certiorari and reviews the issue on the merits, one million persons face the prospect of an unlawfully imposed summer of grinding poverty at lower than subsistence levels, with no legal recourse until this Court reconvenes in the autumn.

The imperative public importance of the narrow issue of statutory interpretation raised by this case, requires that it be settled by this Court prior to subjecting the members of the plaintiff class to an irreparable period of drastic deprivation.

Should this Court deem it inappropriate to grant certiorari herein, it is respectfully submitted that it possesses power pursuant to 28 U.S.C. 1651(a) to frame an appropriate extraordinary order staying the implementation of

the AFDC cuts pending the determination of their legality by this Court. Cf. *Phillips* v. *United States*, 312 U.S. 246, 254 (Mr. Justice Frankfurter).

Respectfully submitted,

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